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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEGAN KELLY,

Case No. C-07-3002 MMC (EMC)

Plaintiff,

V.

APPLERA CORPORATION,
Defendants.

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

Date: June 13, 2008
Time: 10:30 a.m.
Courtroom: 7, 19th Floor
Judge: Hon. Maxine M. Chesney
Trial Date: September 22, 2008

Complaint Filed: April 23, 2007

1 Defendant Applera Corporation (“Applera”) and Plaintiff Megan Kelly (“Plaintiff”) hereby
 2 submit their Joint Case Management Statement pursuant to Local Rule 16-9(a) and the Standing
 3 Order of this Court.

4 **1. Jurisdiction and Service**

5 Applera: Applera contends that this Court has subject matter jurisdiction pursuant to the
 6 provisions of 28 U.S.C. § 1441(b) because complete diversity exists between Plaintiff and Defendant
 7 and the amount in controversy exceeds the jurisdictional minimum of this Court. Plaintiff has served
 8 Defendant with the Summons and Complaint.

9 Plaintiff:

10 **2. Facts – Applera’s View**

11 Plaintiff is currently employed and has been employed by Applera as an Associate
 12 Production Chemist since February 11, 2002. According to Plaintiff’s Complaint, on July 6, 2004,
 13 Plaintiff tripped and sprained her ankle. Plaintiff went on an extended medical leave until
 14 September 2004. (Complaint, ¶¶ 8-9.)

15 Plaintiff alleges that “[a]s part of her return to work, [she] was supposed to be able to sit
 16 down whenever she needed to,” and that Applera “pressured [her] to get orders done quickly, and
 17 [she] was seldom able to sit down.” (*Id.*, ¶ 8.) Plaintiff also alleges in her Complaint that “[o]n or
 18 about September 21, 2004, while moving about extensively and attending to multiple tasks at the
 19 same time, [she] re-injured her right ankle.” (*Id.*, ¶ 9.) Plaintiff alleges that “[t]he re-injury was
 20 quite serious, in that [her] ankle did not heal well, and she continued experiencing serious instability
 21 in her right ankle.” (*Id.*) Plaintiff also alleges that “[t]ests performed by [her] disability insurer in or
 22 about January 2005 to evaluate [her] readiness to return to work seriously injured [her] left wrist,
 23 requiring a visit to the emergency room.” (*Id.*)

24 Plaintiff contends that her “ankle condition is a physical impairment that limited her ability to
 25 perform the major life activity of work.” (*Id.*, ¶ 10.) She further alleges that “[t]he severity of [her]
 26 alleged] disability required her to remain off of work for a period of time.” (*Id.*, ¶ 11.)

27
 28

1 Plaintiff went on leave, during which time, she contends that she presented Appler to with
 2 physicians' notes in support of her requests for time off of work and regularly left telephone
 3 messages with her immediate supervisor regarding her status and the progress of her recovery. (*Id.*)

4 According to Plaintiff, in January 2006, her "physicians determined that she was well enough
 5 to return to work, with restrictions on the number of hours she could work, a restriction on lifting
 6 any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes." (*Id.*, ¶
 7 12.) Plaintiff also alleges that she "provided defendants [sic] with a physician's note authorizing her
 8 return to work, and specifying these restrictions." (*Id.*)

9 Plaintiff alleges that she telephoned her supervisor, Jonathon Laosiri, to discuss her return to
 10 work, but that he did not return her calls. Plaintiff also contends that she approached Appler's
 11 Human Resources Department directly to "explain[] that she was authorized to return to work, and
 12 specifying [her] restrictions." (*Id.*, ¶ 13.)

13 Plaintiff contends that Appler made no effort to return Plaintiff to work until in or around
 14 May 2007 and that Appler "summarily informed Plaintiff that she could not return to work unless
 15 she either had no restrictions at all and/or could work twenty hours per week." (*Id.*, ¶ 14.) Plaintiff
 16 also alleges that she sought accommodations from Appler beginning in January 2006, but Appler
 17 refused to offer her "reasonable accommodations that would allow her to return to work."

18 After Plaintiff provided additional information from her health care providers regarding her
 19 restrictions, Appler allowed Plaintiff to return to work on June 18, 2007.

20 Appler denies Plaintiff's material allegations. In addition, Appler contends that Plaintiff
 21 and her counsel failed to engage in the interactive process in good faith and that Plaintiff and her
 22 counsel interfered with and obstructed the interactive process. Furthermore, Appler contends that
 23 Plaintiff did not suffer any damages as a result of Appler's alleged conduct.

24 Plaintiff was unable to perform the essential functions of her job, and posed a significant risk
 25 of harm to herself and others in a laboratory environment where she was admittedly handling
 26 "hazardous" chemicals. Plaintiff reported to her own doctors that her ankle felt like it would give
 27 out on her even when she was standing still, and that it was too unstable to stand or walk. Plaintiff's
 28 own medical records demonstrate that she could not have performed the essential functions of her

1 job in a chemical laboratory environment during the period of time in which she claims Appler
 2 failed to accommodate her.

3 In summarizing the above, the principal facts in dispute are:

4 Whether Plaintiff was or is disabled, had a record of being disabled, or was
 5 regarded/perceived as disabled, within the meaning of the Fair Employment and Housing Act
 6 ("FEHA");

7 Whether Plaintiff made a request for accommodation in January 2006;

8 Whether Appler engaged in the interactive process at all in response to Plaintiff's
 9 January 2006 request for accommodation;

10 Whether Appler responded to any of Plaintiff's communications to it between
 11 September 2004 and January 2006;

12 Whether Appler engaged in the interactive process in good faith;

13 Whether Plaintiff engaged in the interactive process in good faith;

14 Whether Plaintiff interfered with and/or obstructed the interactive process;

15 Whether Plaintiff made a request for a reasonable accommodation;

16 Whether Plaintiff's alleged request for an accommodation was reasonable.;

17 Whether Plaintiff's alleged request for an accommodation constituted an undue
 18 hardship under the FEHA;

19 Whether Plaintiff requested to return to work prior to December 2006;

20 Whether Appler denied Plaintiff a reasonable accommodation;

21 Whether Appler's conduct was malicious and oppressive thereby qualifying Plaintiff
 22 for punitive damages.

23 Whether and to what extent Plaintiff suffered economic damages as a result of
 24 Appler's alleged conduct.

25 Whether Plaintiff suffered emotional injuries, and if so, whether they were because of
 26 Appler's alleged conduct, or rather, due to preexisting or concurrent causes.

27 **Facts – Plaintiff's View**

28 The facts have been addressed at length in previous filings, and will therefore not be

1 repeated herein.

2 **3. Legal Issues**

3 Applera:

4 Whether Plaintiff was a qualified individual with a disability. *Green v. State of Cal.*,
 5 ___ Cal. 4th ___, S137770 (August 23, 2007);

6 Whether Plaintiff could perform the essential functions of her job, with or without
 7 reasonable accommodation. *Id.*;

8 Whether Defendant refused to offer Plaintiff a reasonable accommodation in violation
 9 of the FEHA. California Gov't Code § 12940(m);

10 Whether Defendant reasonably accommodated Plaintiff's alleged disability by
 11 granting her extended leaves of absence to recuperate instead of terminating her employment. *Id.*;

12 Whether Defendant or Plaintiff engaged in good faith in the interactive process.
 13 California Gov't Code § 12940(n);

14 Whether Plaintiff or Defendant interfered with and/or obstructed the interactive
 15 process. *Id.*;

16 Whether Plaintiff or Defendant's alleged interference in the interactive process
 17 legally excused or prevented the other party from engaging in the interactive process;

18 Whether Plaintiff's alleged proposed reasonable accommodation available constituted
 19 an undue hardship under the FEHA;

20 Whether Plaintiff mitigated her alleged damages;

21 Whether Plaintiff is entitled to recover punitive damages against Defendant.
 22 California Civil Code § 3294;

23 Whether Plaintiff is entitled to recover prejudgment interest against Defendant.
 24 California Civil Code §§ 3287, 3288;

25 Whether Plaintiff or Defendant is entitled to recover attorneys' fees. California Gov't
 26 Code § 12965(b).

27 Plaintiff: The facts have been addressed at length in previous filings, and will therefore not
 28 be repeated herein.

1 4. **Motions:**

2 Applera: There are no pending motions before this Court. Appler
 3 a intends to file a motion for summary judgment with regard to Plaintiff's claims.

4 Plaintiff: Plaintiff may file a motion for summary adjudication.

5 5. **Amendment of Pleadings**

6 Applera: Appler does not intend to amend any of its pleadings.

7 Plaintiff: This court denied plaintiff's request to file a first amended complaint.

8 6. **Evidence Preservation**

9 Applera: Defendant has suspended all document-destruction policies that could have
 10 potentially resulted in the destruction of any discoverable information pertinent to this dispute.

11 Plaintiff: N.A.

12 7. **Disclosures**

13 The parties have exchanged disclosures.

14 8. **Discovery**

15 Applera: Discovery is ongoing. Due to Plaintiff's counsel's unavailability for depositions of
 16 Plaintiff's sixteen medical providers that Appler has attempted to schedule for several weeks, the
 17 parties will stipulate to extend the discovery cut-off past June 6, 2008. The parties have scheduled a
 18 continued deposition of Dr. Andrew Haskell on June 16, 2008, and are in the process of rescheduling
 19 the deposition of Dr. Barry Rose, which was set for June 4, 2008 but cancelled by Plaintiff's counsel
 20 on June 3, 2008.

21 Plaintiff: Plaintiff's counsel has been readily available for expert depositions. Defense
 22 counsel unilaterally set the deposition of Dr. Rose (with 2 days notice) for 7:30 a.m., a time that
 23 plaintiff's counsel was not available, and in conflict with the deposition of defendant's expert, set for
 24 10:00 a.m. on that same day. The parties have agreed to extent the expert discovery cutoff, so that
 25 both parties can complete further expert depositions.

26 9. **Class Actions**

27 Not applicable.

28 10. **Related Cases**

1 Plaintiff filed a related case in Alameda Superior Court, also naming Applera Corporation as
 2 a defendant, Alameda County Superior Court Case No. RG0838011.

3 **11. Relief**

4 Applera: According to Plaintiff's Complaint, Plaintiff seeks compensatory and general
 5 damages in an amount according to proof; punitive damages; attorneys' fees and costs; pre-judgment
 6 and post-judgment interest; and costs of suit. Defendant seeks costs of suit and attorneys' fees.

7 **12. Settlement and ADR**

8 Applera: The parties mediated this case on September 4, 2007, but were unable to reach a
 9 resolution of the dispute.

10 Plaintiff: In addition to mediation, the parties had two settlement conferences before
 11 Magistrate Judge Edward Chen. Defense counsel has never negotiated good faith, and has belittled
 12 and been extraordinarily rude to the plaintiff in this case.

13 **13. Consent to Magistrate Judge for all Purposes**

14 Applera: Defendant does not consent to assignment of this case to a Magistrate Judge for
 15 trial.

16 **14. Other References**

17 Applera: Defendant believes that this case is not suitable for reference to binding arbitration,
 18 a special master or the Judicial Panel on Multidistrict Litigation.

19 Plaintiff: N.A.

20 **15. Narrowing of Issues**

21 Applera: Defendant requests that the trial be bifurcated with respect to the issue of punitive
 22 damages.

23 Plaintiff: None at this time.

24 **16. Expedited Schedule**

25 This case cannot be handled on an expedited basis with streamlined procedures.

26 **17. Scheduling**

27 Applera: Trial is set to begin on September 22, 2008. Applera intends to file its Motion for
 28 Summary Judgment on June 20, 2008. Also in June 2008, Applera intends to complete its

1 deposition of Plaintiff's doctors and other medical providers. Prior to trial Appleria intends to file
 2 motions in limine as needed.

3 Plaintiff: Discovery is ongoing, with trial set to commence on September 22, 2008.

4 **18. Trial**

5 Appleria: Defendant contends that Plaintiff has waived her right to a jury trial. Based on the
 6 information presently available to counsel for Defendant, Defendant estimates that the trial will take
 7 approximately 2-4 days.

8 Plaintiff: Plaintiff's counsel estimate the trial length as 3-5 days.

9 **19. Disclosure of Non-party Interested Entities or Persons**

10 Appleria: Defendant filed its Disclosure of Non-Party Interested Entities or Persons on
 11 September 7, 2007.

12 **20. Other Matters**

13 Appleria: Defendant is not aware of any other matter as may facilitate the just, speedy and
 14 inexpensive disposition of this matter.

15 Plaintiff: N.A.

17 Dated: June 6, 2008

19 /s/
 20 _____
 21 Molly Agarwal
 22 LITTLER MENDELSON
 23 A Professional Corporation
 24 Attorneys for Defendant
 25 APPLERA CORPORATION

22 Dated: June 6, 2008

24 /s/
 25 _____
 26 Maureen E. McFadden
 27 LAW OFFICES OF MAUREEN E.
 28 MCFADDEN
 Attorney for Plaintiff
 MEGAN KELLY

PROOF OF SERVICE VIA FACSIMILE & U.S. MAIL

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108-2693. On June 6, 2008, I served the within document(s):

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

- by facsimile transmission on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3). The transmission was reported as complete and without error. The names and facsimile numbers of the person(s) served are as set forth below.
- by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.

Maureen E. McFadden
 Law Offices of Maureen E. McFadden
 819 Bancroft Way
 Berkeley, CA 94710
 Fax: 510.868.0976

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 6, 2008 at San Francisco, California.



Diane Jarest

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